INTERSTATE ARBITRATION IN ANTIQUITY

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Of recent years there has been much discussion of the history and possibilities of international arbitration; and hopes are entertained of eventually establishing this method of settling disputes as a substitute for war with all its sacrifice of human life and energy, and the train of needless horrors which follows in its wake. In such discussion the question of arbitration among the pre-Christian nations has sometimes received the tribute of a passing remark. It is, however, apparent that the writers of magazine and encyclopedia articles upon the subject really know nothing about this phase of it at first hand. It has, therefore, seemed worth while to work through the extant material and to determine in what ways, if in any, ancient arbitration differed in its objects and procedure from modern international arbitration; to discuss the historical significance of its use; and to determine its success or failure as a means of adjudicating difficulties between ancient states.

The most authoritative treatment of this subject in English is that to be found in the monumental *History and Digest of International Arbitrations to Which the United States Has Been a Party*, by John Bassett Moore.[1] In his "Historical Notes"[2] Mr. Moore has treated of ancient arbitration merely by translating passages from Merignhac's work, entitled *Traité théorique et pratique de l'arbitrage international.* Merignhac has divided his treatment, discussing separately, first, arbitration in the East and Greece; and second, arbitration under the Roman empire. The only cases, two in number, which he cites from the eastern nations, deal with the Persian empire in the time of Darius. The first is that mentioned by Herod-

[1] *Miscellaneous Documents of the House of Representatives for the Second Session of the Fifty-Third Congress.*

[2] Moore *op. cit.*, Vol. V.

otus[1] in the seventh book, where Darius decides a dispute as to the succession to the throne between his two sons, Artabazanes and Xerxes. The decision favors Xerxes as the legitimate heir, he being grandson of Cyrus the Great, through his mother, the queen Atossa. This descent gives him the stronger claim to the throne. This decision is certainly not to be regarded as an interstate arbitrament. A king merely decides a matter of contested succession in his own household.

The second instance is also taken from Herodotus.[2] The year is 493 B. C. "Artaphernes summoned envoys from the cities (the Greek cities of Asia Minor) and compelled the Ionians to make agreements with one another that they would submit to legal decisions and not plunder and ravage the territory each of the other." These states, loosely subject to Persia, are to submit their local differences to reference. This cannot, however, be used as an instance to prove that the Persian government was accustomed to employ such arbitrament in its own dealings with foreign powers. It is not an example of Persian arbitration. The Persian government merely employs a long-established Greek custom in settling the local disputes amongst the Greek cities of Asia Minor. No less than a half-dozen cases might be cited to prove that the Greek cities had arbitrated their interstate difficulties even long before this time; and in several of these the Greek cities of Asia Minor were involved. Merignhac is unwilling to commit himself upon the subject of arbitration among the oriental nations on the ground of insufficient evidence. The one true case which he does cite is Greek. I do not believe that there was the possibility of employing arbitration in any of the oriental courts, even in Persian diplomacy, excepting where, as here, Greek interests alone were involved.[3] The honor therefore of first formulating the principle of interstate arbitration and of first putting it into practice lies with the Greeks.

[1] vii. 2. 3. [2] vi. 42.

[3] Xenophon, in the *Cyropaedia* ii. 4, relates that Cyrus offered to submit the troubles between the Medes and the Assyrians to the judgment of the "King of the Indians," in case the Assyrians could show they had been in any way wronged by the "Medes." Because of the nature of the *Cyropaedia* this cannot be used as a historical instance, and merely shows that Xenophon himself was acquainted with the workings of arbitration.

In a clear-cut dissertation, published at Paris[1] Victor Berard has carefully collected the evidence upon the Greek phase of the subject extant up to that year. In the greater number of cases our information is obtained from inscriptions. They give the decrees of acceptance of the proffered arbitration of some neutral city, sometimes from only one party involved, sometimes from both, sometimes containing also the decision of the arbitrator. The disputes which are thus decided are varied in character. Boundary troubles of course predominate. Questions of contested territories, especially colonies, are frequently thus disposed of. Disputes relating to harbor and water rights, the ownership of temples with their precincts, and monetary claims of private citizens, come within the scope of such procedure. The earliest recorded instance of a proposal of arbitration is to be found in Pausanias.[2] Crazed by wrongs done him by a Spartan, including the murder of his son, a Messenian named Polychares ran amuck and murdered a number of Lacedemonians. The Messenians refused to deliver him over to the Spartans, whereupon the latter prepared for war. "But the Messenians said that they were willing either to be tried by their common kinsmen, the Argives, in an assembly of the league, or to refer the case to the Areopagus at Athens. . . . . The Lacedemonians are said to have vouchsafed no reply." This is the Messenian version of the causes which led up to their first war with Sparta as given by Pausanias. If the incident is historical it is to be dated about 750 B. C. The subject of dispute is here the illegal act of an individual which demands redress.

Herodotus[3] relates that the Athenians seized and recolonized the Mytilenean colony of Sigeum in the Troad. The Mytileneans insisted that the place, which was advantageously located for commerce, be restored to them. In consequence of this war broke out. "The Mytileneans and Athenians were reconciled by Periander, the son of Cypselus, who was chosen by both parties as arbiter. The award was that each party should retain that which it at that

[1] Berard *De arbitrio inter liberas Graecorum civitates* (Paris, 1894). My discussion is based upon the material offered by Berard with the addition of the inscriptional material which has since appeared.

[2] Pausanias iv. 5. 2. [3] iv. 94, 95.

time possessed; and Sigeum passed in this way under the dominion of Athens." The approximate date of this decision is 600 B. C. The dispute is one of conflicting ownership of colonial territory; and the arbiter selected is the most powerful Greek ruler of his time. Periander could at this time be trusted to give an unbiased decision, as Athens had not yet aroused the mistrust of Corinth by competition in the field of transmarine commerce.

During the seventh and sixth centuries I have noted six undoubted attempts at arbitration, including those successful and those which were unavailing. Eduard Meyer[1] has remarked upon the increasing use of this practice as a characteristic of the development of closer interstate relations between the Greek city-states of this period, and of the interaction of internal and foreign policies each upon the other.

During the earlier half of the fifth century there is but one instance of arbitration, in which Themistocles successfully acts as umpire. The decline in its use is due to the fact that the Eastern peril had temporarily put a stop to local Greek dissensions. In the latter half of the century arbitration was suggested in seven instances, but in each case one of the contesting parties refused to submit to such decision. The disputes all arose from some phase of the Athenian-Peloponnesian war. It is significant of the Greek estimate of this procedure that there is an arbitration clause in the thirty years' truce entered into by Athens and Sparta in 445. This clause specified that neither side should take up arms against the other, in case that party to the treaty was willing to submit to a judicial award.[2] In the Treaty of Nicias, made in 421, the arbitration agreement was retained. Furthermore, it is significant that Thucydides has Pericles say, evidently as a reproach to the Spartans, that they at the beginning of the war refused to submit to such a decision.[3] Archidamus,[4] king of Sparta, also urges the Spartans at the beginning of the war to accept the Athenian proffer to arbitrate. He says: "Send an embassy to Athens to discuss the troubles regarding Potidaea and the accusations our allies make against them, especially

[1] *Geschichte des Altertums* II, p. 667.

[2] The references for this are Thuc. i. 78, 140 and vii. 18.

[3] Thuc. i. 140. [3] Thuc. i. 85.

as they are ready to submit to a judicial decision. For it is not legitimate to proceed outright against a state that offers this, as against a malefactor." A number of passages in the plays of Euripides which appeared during the war show that the great dramatist was impressed with the futility of war and the possibility of a peaceful method of settling disputes.[1] He does not definitely mention arbitration. Nevertheless these remarks display the fact that Greek thinkers were aware of the useless expenditure of war and of the possibility of substituting some other form of decision.

The failure to secure a peaceable issue of difficulties at this time is no reflection upon the efficacy of Greek arbitration as a whole. The political and commercial jealousies then existing had kindled such flames of passion as only blood could quench. Modern arbitration has yet to prove that it is potent enough to meet a like situation successfully.

Of the fifteen suggested and actual arbitrations that I have noted during the fourth century, twelve resulted in a definite decision adhered to, at least for a time, by both parties involved. The proposition made by Thebes after the battle of Leuctra, to submit her differences with Sparta to the state of Achaia for a peaceable adjustment, was rejected[2] by Sparta. About 340 B. C. the Athenians, in a dispute with Philip of Macedon, about the ownership of the small island of Halonnesus, refused to accede to Philip's demand for a peaceable decision before an impartial board. In both these instances the feeling of bitterness between the states involved was particularly strong.

From 300 B. C. to 100 B. C. there are forty-six recorded cases which I think are to be classified as interstate arbitrations. In thirty-six cases, inscriptions discovered within the last century, most of them in recent years, form our source of information. The evidence is, of course, indisputable. The troubles adjusted are almost always boundary disputes. A fragmentary inscription published by Lebas and Foucart,[3] gives the decree of acceptance by the city of Messene and by the Phigalians of a decision made by

[1] Euripides *Suppliants* 949, and *Helen* 1151.

[2] Polybius ii. 38, 39.

[3] *Voyage archéologique en Grèce et en Asie Mineure* 328 A.

a commission of three Aetolians, in regard to the use of certain lands evidently lying between them. Both parties are to enjoy the fruits of this land, just as they are enjoying them at the time of the decree. The land in question must have been pasture-land.

In the *Bulletin correspondence hellénique* X. 240, I find the text of a decree recording the suit of the heirs of a Calymnian against the city of Cos. The money lent by two Calymnians had been repaid to one of them but not to the other. The heirs of this man instituted a suit which was tried before the Cnidians, who gave judgment for the plaintiff.

I have given some of the disputes which in antiquity might be adjusted by arbitration. The questions which have in modern times proved susceptible of arbitration have been classed under five heads: (1) Boundary disputes; (2) Pecuniary claims arising from unlawful seizure of property; (3) Claims for damage by destruction of life and property; (4) Disputed possession of territory (including disputed water rights, such as fishing); (5) Interpretation of treaties.[1] There are a number of cases which will not strictly come under any one of these heads; for in recent years the scope of the questions involved has become much wider, the subjects of disputes more varied. Yet the general type of modern arbitrations may be said to be expressed by the classification just given. In the list of ancient arbitral decisions, each one of these classes is represented, excepting the third class which comprises claims for damage by destruction of life or property. The question of interpretation of a treaty is involved in the offer made by the Athenians to accept an arbitral decision[2] upon the demands made by the Peloponnesian League just preceding the Peloponnesian War. Sparta demands that Aegina be given her independence, that the siege of Potidaea be raised and the embargo decree against Megara be rescinded. The last two demands are based upon the feeling that Athens has broken the treaty of 445.

It is apparent that the kind of dispute which might obtain a successful adjustment by arbitration was the same with the Greeks as with nations today. Although modern international questions

[1] Eleanor Lord in *American Academy of Political and Social Science* II, p. 471.

[2] Thuc. i. 78, 140, 144, 145.

deal with a greater territorial expanse and with greater numbers of people, they are not intrinsically different. The following statement made by Merignhac is quite misleading: "Their arbitrations did not cover great political questions, for every Greek city preserved its independence with a jealous care."[1] The statement should read: "Their arbitrations covered questions which were of great importance in their political life; for every Greek city preserved its independence with a jealous care." In support of this view let me quote the opinion of Professor J. P. Mahaffy, taken from his *Alexander's Empire*.[2] "The whole of Greece therefore separated into small city-states, embracing a little territory and some villages. These towns strove to be independent and self-supporting and dealt with their petty neighbors as with foreign states, so that the treaties between neighboring towns, such as Tegea and Mantinea, Sicyon and Corinth, would be distinctly international treaties, however small the scale upon which these treaties could be applied."

In Greece, as with us today, international ruptures on matters involving the "honor" or the "essential interest" of nations were not amenable to arbitration. The words "honor" and "essential interest" are quoted from the conventions of the Hague Conference of 1899.[3] I see no reason, however, to doubt that even such questions will ultimately thus be adjusted. As modern states grow accustomed to reference to the Hague tribunal, the nature of those differences which touch upon the honor and essential interests of nations must gradually change and be limited to a very few questions, involving perhaps the political extinction of one of the disputant parties. Despite the two recent wars, the Boer War, coincident with the meeting at the Hague, and the Japanese-Russian war since that meeting, in which three of the contestants were signatory powers to the conventions of the Hague, I hope and believe that this optimism will eventually be justified.

The procedure of Greek arbitration did not differ essentially from that of today. With consent of both parties an umpire was appointed, in the greater number of cases (about 30), a commission.

[1] Moore *International Arbitrations* V. 4822. [2] P. 176.

[3] W. Evans Darby *International Tribunals*, 4th edition, p. 604, Sec. III, article 9, upon the "Regulations of International Conflicts."

The number of members is in most cases not given, but in two cases the number of the board is two; in three cases it numbers three; in two cases it runs up to five. In discussing the decision in certain boundary disputes between the town of Acraephiae and other Boeotian towns, settled by a commission of three from Larisa, Maurice Halleaux states that this is the usual number of the board.[1] In this he is followed by Paul Perdrizet.[2] This statement is not justified by the extant evidence. The commission varied in size, as during the past century.

In about twenty cases an entire city, represented by its assembly or senate, renders the award. In this list I have included the decisions given by the Roman Senate which is appealed to frequently after the year 200 B. C., not so frequently, however, that the Senate can be regarded as holding the position of an international court of appeal.

In twelve cases a king or tyrant acts as arbitrator; in six cases some private citizen of mark. Contrary to one's expectation, the oracle at Delphi plays a very minor rôle as a court of arbitration. In fact I find only the following two instances where appeal to the Pythia is suggested. When Corinth and Corcyra came to blows over their common colony Epidamnus, the Corcyreans showed themselves ready to intrust the dispute to the judgment of cities of the Peloponnese agreed on by both sides. Or they would submit to the decision of the Delphic Oracle.[3] Corinth refused this proffer. Diodorus[4] tells of a dispute for the possession of a neighboring town between the Asiatic cities of Cyme and Clazomene, which in the year 383 resulted in war. By common consent the matter was referred to the Pythia at Delphi. She decreed that on a given day the disputants should race, each from her own city, for the contested territory, the one first arriving to be the victor and own the town. Clazomene won by a trick. If this story may be considered as deserving historical consideration (which I doubt), it only goes to show that the Greeks were justified in avoiding the oracle where a careful and fearless decision was to be rendered after a fair hearing. These are the only recorded cases that came before the Oracle, which may be really termed interstate arbitrations.

[1] *Bull. corr. hell.* (1890), p. 39.

[2] *Ibid.* (1900), p. 76.

[3] Thuc. i. 28.

[4] Diod. Sic. xv. 18.

The Amphictyonic Council, too, seems to have had little influence or standing as a court of reference. In the one instance which is referred to this Council the subject is one in which the reference to the Delphic Amphictyony is peculiarly appropriate. In the speech upon the crown Demosthenes[1] states that Aeschines was deposed and Hyperides substituted in his stead as advocate of the Athenian interests "in the matter of the temple at Delos." For some time the guardianship of the temple of Apollo at Delos was disputed between the Athenians and the Delians. About 345 the question was referred to the Amphictyonic Council, which had jurisdiction over similar questions that might arise regarding the precinct at Delphi. The decision favored Athens, as we know from inscriptions[2] later than this which show Athens in possession of the temple. Except in this one case the influence of the Amphictyonic Council did not extend beyond matters affecting the sacred territories themselves.[3] In the numerous boundary disputes, for example, between the Boeotian towns and the Thessalian towns and elsewhere in central Greece, some neutral city, such as Larisa[4] or Megara,[5] or some neutral people, such as the Aetolians or Athenians, was always appointed arbiter.

The terms used for arbiter are: δικαστής, κριτής, διαιτητής and διαλλακτής, or, when the dispute is referred in general terms to a city, this city is called ἡ ἔκκλητος πόλις.

In three of the known cases each of the disputants agrees to pay a stated fine to the other party if the decision of the arbiter be in any way broken. In an inscription[6] giving the decision of a commission of Eretrians in a controversy between the islands of Naxos and Paros, I find this clause: "Whichever of the cites, or whatever individual, may do anything contrary to this covenant, a fine is to be paid to the other party, of twenty talents in money if a city transgress the agreement, of five talents if an individual violate it." This decision is probably of the third century. A similar clause occurs in a decision rendered by the town of Cnossos in Crete,[7] arbitrating

[1] Demosthenes *De cor.* 170–71; cf. Hyperides *Con. Demadem* v. 3.

[2] Berard, p. 27.

[3] Cf. *Bull. corr. hell.* (1903), p. 107.

[4] *Ibid.* (1890), p. 36.

[5] *Ibid.* (1900), p. 75.

[6] *Corpus Inscrip. Graec.* 2265.

[7] *Bull. corr. hell.* III, p. 292.

between the Cretan towns, Latos and Olous, and in the decision rendered by Makon of Larisa in a boundary dispute between the Boeotian cities Thebes and Alea.[1] These are of the second century.

Excluding this attempt to force adhesion to the umpire's decision by means of a monetary forfeit, there is only one important feature in which ancient procedure differed from that of modern times. This is the absence of a permanent international court to which all cases might be referred, such as we now have in the Hague tribunal. It is to be noted, however, that since the establishment of the court at the Hague, in the three and a half years between January 1, 1901, and the summer of 1904,[2] out of twenty-one cases submitted to arbitration, only four have come for decision before a commission chosen from this tribunal.

The Romans became acquainted with the Greek custom of proffering mediation or of submitting to the decision of a neutral body, through the Italiote Greeks. Polybius[3] relates that, at the time of the Pythagorean disorders in Lower Italy, deputations came from most parts of Greece endeavoring to settle these troubles. But the Greek cities accepted the mediation of the Achaeans, preferring them to all others. In the Samnite wars, after the battle of the Caudine Forks, the Tarentines insisted with menacing threats upon arbitrating the Roman-Samnite differences.[4] The Romans refused the proffered intervention and defeated the Samnites. Ihne does not accept this as a fact.[5] Mommsen,[6] however, does not doubt that it occurred; nor is there any reason why a Greek city should not follow the course of the Tarentines, inasmuch as arbitration and mediation were well-recognized features of their foreign policy. The indignation displayed by Livy, who speaks of the "immeasurable arrogance" of the Tarentines, who were unable to direct their own affairs, yet presumed to dictate to others in matters of peace and war, is characteristic of the Roman feeling toward arbitration and mediation. The Roman spirit could not brook

[1] *Loc. cit.* (1901), p. 350.

[2] See Darby *International Tribunals*, pp. 900–907.

[3] Polybius ii. 39. [4] Livy ix. 14.

[5] Ihne *History of Rome*, English edition, I, p. 487.

[6] *History of Rome*, Book II, chap. 6.

such interference with their plans. This is again manifested in the war of Rome against Perseus (171–67 B. C.), when Prusias of Bithynia and the free city of Rhodes proffer their services to settle the war.[1] Livy tells of the haughty tone of the members of the Rhodian embassy, who recite their sufferings from the war and demand that peace be made. Says Livy: "I am sure that this matter cannot even now be read or heard without anger. One may imagine what must have been the feelings of the Senate when they heard it. Claudius is sponsor for the statement that no response was given them." Such is the indignation of the imperialist of Livy's time at the suggestion of intervention from a neutral or friendly state. The feeling of the Romans of the third and second century B. C. was the same, as their action in these and several other cases shows.[2] Despite the fact that the Senate in the second century B. C. often acted as arbiter for the Greek states, the Roman republic did not acknowledge the principle of arbitration when it was applied to itself. In the time of the Empire, Rome's dominating power precluded the possibility of arbitration between equal states, except perhaps with the Parthian kingdom. In the disputes which arose between her subjects the attitude of the Empire was, of course, one of dictation. With the Parthian kingdom she stood upon a footing of armed and suspicious peace, when not actually engaged in war. The field of investigation is therefore narrowed down to the political history of the Greek states alone.

In his discussion of the present topic Berard has reached a peculiar conclusion as to the results and value of Greek arbitration.[3] He finds four cases which come up for reconsideration time and again before new tribunals as the balance of power shifts in Greece. A question of the ownership of a temple and precinct, claimed by the two Thessalian towns, Melite and Narthacium, was first decided about 385 B. C. in favor of Melite by Medeius, probably a tyrant of Pherae. About 350 B. C. this decision was reaffirmed by the common council of the Thessalians. The same award was made by a

[1] Livy xliv. 14.

[2] For an example of Roman abuse of the position of arbiter see Cicero *De officiis* i. 10.

[3] Berard, pp. 101 ff.

certain Pyllos (?), possibly the Epirote king, Pyrrhus. In 196 the Roman commission of ten, headed by Flamininus, in their adjustment of Greek affairs, reversed the former awards by giving the territory to the Narthacians. This decision was ratified by the Roman Senate. Twice more was the matter brought up, in both instances the Narthacians maintaining their possession of the temple precinct.

There are three other examples similar to this, the worst of which arose from a territorial dispute between Samos and Priene. Between the time of Alexander and the final decree of the Roman Senate in 136 B. C., of which we have the inscription, the matter was readjusted time and again, apparently undergoing nine distinct trials. Berard has made this failure to accept the arbitral award as conclusive, in the four instances mentioned, the basis for the following conclusions:[1] "So often as they submitted to arbitration, their intention was not to end their strife upon a basis of justice, or to renew peaceful relations with their neighbors. But when worn out by war, they hoped to obtain thereby a brief respite to recuperate their forces and get together their allies or mercenaries, in order to renew the war; or when some new power arose in Greece, they fled to it, not as to an arbiter but as to an avenger. . . . . Since the Greeks made use of arbiters with this intent, one cannot wonder that this institution was of no avail among them in establishing peace, but was an instrument of war and enslavement, by no means promoting friendship and fraternity."

There is absolutely no justification for this wholesale condemnation. Granted that an arbitral award was often not final, still, had Greek arbitration prevented war only once in each of the four cases mentioned, it would be worthy of consideration. However, even with the limited information at our disposal, with shattered inscriptions in which the portion containing the decision is often wanting, I find at least thirty cases in which the award seems to have been accepted as final by both parties involved. In the nineteenth century the ratio of cases in which an arbitral decision was reached and mutually accepted, and its provisions really put into effect, to those which were not accepted, is approximately as 17 to 3.[2] In ancient

[1] Berard, pp. 105 ff.

[2] Compiled from Darby *International Tribunals*, pp. 771–838.

times, omitting those to which Rome was a contending party, and not reckoning the four disputes which were so often reopened after decision had been given, the ratio of arbitrations apparently conclusive to those which failed, was about 32 to 7. The meagerness of our information of course precludes our knowing whether the terms were always carried out after being ratified by the contesting states. I have gone on the assumption that when the decision of the arbitrating commission was officially accepted and published, the provisions were actually carried through.

This is, I think, the only fair basis for a conclusion as to the success of ancient arbitration. The figures show a very fair percentage of successful cases. Berard's conclusions are further disproven by the fact that the suggestion to arbitrate coming from one party was often officially rejected. Had there not been a public sentiment which forced arbitrating states to accede to the award given, when once proceedings had been begun, there would have been no reason to refuse to arbitrate under any circumstances. The state that wished to do so might have entered into such a compact and then have rejected the award to suit its own convenience. We have not lost faith in international agreements of this sort in our own day because a certain percentage of arbitrations have resulted in nothing, or because a number of cases had to be sent to a second tribunal before a successful issue was reached.

The extant evidence does not warrant the selection of any one Greek city-state which may be regarded as an "acknowledged court of reference" for any particular period. Shuckburgh in his translation of Polybius,[1] says: "In continental Greece before the Persian wars, we find Sparta occupying the position of an acknowledged court of reference—a position in which she had been preceded by Argos." As Sparta appears as umpire in only one of the recorded awards up to 420 B. C., this statement is misleading. Argos does not appear in this capacity at all, up to that time. In fact this state only acts as umpire once in all the history of Greek arbitration, so

[1] Vol. I, Introduction, p. 45. This statement is based on Herodotus vi. 49. The appeal to Sparta in the case of the "Medizing" of Aegina, just before the invasion of 490, is due to the conditions of that time which forced an ephemeral union of the Greek states in which Sparta naturally took precedence. Cf. Grote, Vol. IV, part ii, chap. 36.

far as our information extends. The same objection is to be urged against the statement made by Professor Mahaffy[1] that "the Rhodians had for a century (about 250 to 150 B. C.) been the acknowledged peacemakers and arbitrators among the nations, and if they had often failed, they had often succeeded and had been found thoroughly just and trustworthy in their decisions." The Rhodians appear only twice in this rôle in the list of arbitrations known to us. The Roman Senate, including the commissions which it sent to the East with full powers, acts in this capacity six times in the same period. This fact of itself shows that Mahaffy's statement of the importance of the city of Rhodes as an interstate tribunal is exaggerated.

In the recent books upon arbitration and international tribunals, the Greek Amphictyonies are usually regarded as the first peace organizations.[2] Although their influence undoubtedly helped to develop a spirit of humanity and a better understanding between the Greek tribes, the tendency of recent investigation has been to limit their powers almost exclusively to matters religious. Members of the same Amphictyony might, and did, regard others of the same league as their inveterate enemies, with whom war was wont to break out on slight provocation. The inability of the Amphictyonies to develop a real and lasting political influence is nowhere so clearly shown as by the fact that they were not called upon to arbitrate even those cases in which both of the disputants belonged to one and the same religious league.[3] It is probably in this very circumstance that the explanation of the rise of arbitration before specially chosen arbiters is to be found. The Amphictyonies centering about some famous sanctuary are one expression of a force working toward Hellenic unity. This was continually counteracted by the opposite tendency toward tribal isolation and the jealous preservation of the individuality of each city-state. Arbitration between these same states, animated as they were by a feeling of kinship as Hellenes, must be regarded as an expression of this unifying

[1] Mahaffy *Greek Life and Thought* (London, 1887), pp. 344, 345.

[2] Darby *International Tribunals*, pp. 1–9; F. Dreyfuss *L'arbitrage international* (Paris, 1892), pp. 5–9.

[3] The boundary dispute between the Thessalian towns of Melite and Xynia (*Bull. corr. hell.* (1901), p. 344), in which the Aetolians acted as arbiters, will serve as one of several cases in point. In the repeated decisions of the trouble between Melite and Narthacium, which was discussed above, the Delphic Amphictyony plays no rôle whatsoever.

tendency in the political field. The contending cities were often separated by but a few miles. Citizens of each were intimately acquainted. The disastrous economic results of war would be immediately and keenly felt by each member of the community. These facts must have materially assisted in developing the institution of decision by arbitral award, though it would be impossible definitely to trace their influence.

The political conditions of the sixth and fifth centuries B. C. were not of a nature to extend this development to the settlement of differences between Hellenic and non-Hellenic nations. The possibility of arbitration with the semi-barbarous nations of the North and of the far West did not exist, since arbitration demands the voluntary submission of a dispute between two equal powers to the decision of a neutral body. The Persian and the Carthaginian states were the only ones which the Hellenes faced as equal combatants. The Persian policy of territorial expansion by conquest and the Carthaginian effort to meet Greek commercial competition in the West by force, involve a struggle for existence between civilizations naturally hostile one to the other. When the Greek cities of Italy tried to arbitrate with Rome, the rising barbarian power of the West, they soon found that the character and aims of the Roman Senate and people were not such as to countenance a peaceful, judicial settlement of their difficulties.

Under other conditions, with a unified Greek nation opposed to other nations upon the same political plane, the idea of arbitration might have attained in antiquity the important position which it seems to be taking in the political life of the nations of today. In judging its importance in Greek history we must keep in mind that modern arbitration is still an experiment, an ideal toward which modern civilization is working. Great and vital international difficulties are still settled by war. Yet we justly regard the increasing number of international arbitrations and the establishment of the Hague tribunal as evidence that the spirit of humanity is growing in our own day and age. In the same way we must give the Greeks credit for a high degree of development in the sphere of political thought, inasmuch as they recognized the principles of humanity involved in arbitration, and were at least fairly successful in applying them.